

United States Court of Appeals for the Fifth Circuit

United States Courts
Southern District of Texas

FILED

May 05, 2021

Nathan Ochsner, Clerk of Court

No. 20-20267

United States Court of Appeals
Fifth Circuit

FILED

May 5, 2021

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

RUSTY EUGENE DUKE,

Defendant—Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:20-CV-1280

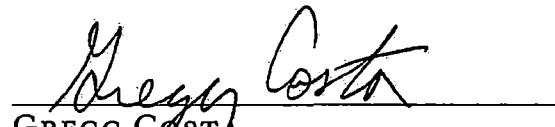
ORDER:

Rusty Eugene Duke, federal prisoner # 15714-078, seeks a certificate of appealability (COA) to appeal the denial of his 28 U.S.C. § 2255 motion seeking relief from his sentence. The district court dismissed his motion, concluding that it lacked jurisdiction to consider it because it was successive and Duke had not obtained this court's authorization to file it.

To obtain a COA, Duke must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 483 (2000). Where, as here, the district court dismissed his petition on procedural grounds, Duke is required to demonstrate "that jurists of reason would find it debatable whether the petition states a valid claim of

the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Slack*, 529 U.S. at 484.

Duke has not made the requisite showing. Accordingly, his motion for a COA is DENIED.



GREGG COSTA
United States Circuit Judge

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

**LYLE W. CAYCE
CLERK**

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600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

May 05, 2021

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 20-20267 USA v. Duke
USDC No. 4:20-CV-1280

Enclosed is an order entered in this case.

Sincerely,

LYLE W. CAYCE, Clerk

Jann Wynne

By:

Jann M. Wynne, Deputy Clerk
504-310-7688

Mr. Rusty Eugene Duke
Ms. Carmen Castillo Mitchell
Mr. Nathan Ochsner, Clerk